

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE THIRD DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE L.NARASIMHA REDDY

WRIT PETITION NO : 19998 of 2004

Between:

Rakesh Shah, s/o Bhoormal Shah,
r/o Flat No.2, 3rd Floor, P.No.8-2-60, Second Bazar,
Monda Market, Secunderabad, A.P.,

..... PETITIONER

AND

- 1 The Divisional Cooperative Officer, Secunderabad Division, Secunderabad, A.P.,
- 2 Padmavathi Cooperative Urban Bank Ltd., having its office at Subashroad, Secunderabad, A.P., rep., by the Cooperative Sub Registrar-cum-Sale Officer.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue writ or direction more particularly in the nature of writ of mandamus declaring the action of the second respondent in putting the re-auction on 2-11-2004 of the flat No.2, 3rd Floor situated at premises No.8-2-60, Second Bazar, Near Monda Market Police Station Secunderabad is quite illegal, arbitrary, and opposed to the principles of the natural justice.

Counsel for the Petitioner:MR.T.V.RAJEEVAN

Counsel for the Respondent No. 1: GP FOR COOPERATION

Counsel for the Respondent No.2 : Mr. P.R. Prasad, SC

The Court, at the stage of admission, made the following :

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ORAL ORDER:

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The petitioner participated in the auction held by the 1st respondent for sale of Flat No.2, 3rd floor of Premises bearing No.8-2-60 at Second bazar, Monda Market, Secunderabad, belonging to a creditor of the 2nd respondent-bank. The auction was held on 4.3.2004, in the process of recovery of amount due from the creditor of the 2nd respondent. The petitioner emerged as the highest bidder for a sum of Rs.3,35,000/- and deposited a sum of Rs.50,250/-, representing 15% of the bid amount.

The petitioner states that after emerging as the highest bidder, he approached the ICICI bank for availing loan and the said bank insisted on furnishing certain documents, such as sanctioned plan for construction, link documents, property tax receipts, encumbrance certificate etc. Petitioner addressed a letter on 31.5.2004 to the 1st respondent to furnish the said documents so as to enable him to secure loan. Alleging that the 1st respondent did not comply with the request, this writ petition is filed seeking necessary direction and declaration.

Heard the learned counsel for the petitioner, the learned Government Pleader for Cooperation and Mr. P.R. Prasad, learned Standing Counsel for 2nd respondent.

The petitioner seeks a direction to the respondents to furnish him the documents such as municipal approved plan, property tax receipts, encumbrance certificate, draft sale deed, link documents etc., in relation to the property referred to above. The petitioner emerged as the highest bidder and he states that the said documents are needed to enable him to avail loan facility. The respondents clearly stated that the said documents cannot be furnished by them, particularly at this stage, and the petitioner was supposed to participate in the auction for purchasing the flat on 'as is where is' basis.

The petitioner ought to have verified the nature of the property and the availability of various documents in relation to the sale, before participating in the auction. In sales of such nature, the executing authority or the financing agency is not supposed to be in possession of such documents. The petitioner cannot insist upon the respondents to furnish those documents after he emerged as the highest bidder. Therefore, he has to choose between the alternatives of depositing of balance of consideration and to take the property as it exists now, or to seek refund of the amount deposited by him. When this was pointed out, the learned counsel, on instructions, submits that the petitioner cannot mobilize the balance of the amount, except through a loan from bank and in that process of the matter, he be refunded the amount paid by him.

It cannot be said that the petitioner committed such a default as to entail in forfeiture of amount deposited by him. His expectation to have necessary documents to enable him to obtain loan cannot be said to be unreasonable or not legitimate.

Therefore, the writ petition is disposed of directing the respondents to refund the amount of Rs.50,250/- paid by the petitioner, within a period of four weeks from

the date of receipt of a copy of this order, and the said amount shall not carry any interest. It is represented that the petitioner is the tenant in respect of the property referred to above. It is made clear that the petitioner shall be under obligation to pay the rents to the bank from February, 2005 and vacate the premises soon after the auction is concluded in favour of any third party. No costs.

3.2.2005

CVM

To,

- 1 The Divisional Cooperative Officer, Secunderabad Division, Secunderabad, A.P.,
- 2 Padmavathi Cooperative Urban Bank Ltd., having its office at Subashroad, Secunderabad, A.P., rep., by the Cooperative Sub Registrar-cum-Sale Officer.
- 3 2 CCs to G.P. for Cooperation, High Court buildings, Hyderabad (OUT).
- 4 2 CD copies.